NO. A21-1587

State of Minnesota

In Supreme Court

State Farm Fire and Casualty Company,

Appellant,

vs.

Aaron Wesser,

Respondent.

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

Adina R. Bergstrom (#0337833)
SAURO & BERGSTROM PLLC
988 Inwood Avenue North
Oakdale, MN 55128
Tel: (651) 389-9915
adina@saurolaw.com

Attorneys for Amicus Curiae United Policyholders

Scott G. Williams (#0349410)
HAWS-KM, P.A.
30 East Seventh Street, Suite 3200
St. Paul, MN 55101-4949
Tel: (651) 227-9411
swilliams@hkmlawgroup.com

Attorneys for Appellant

Anthony A. Remick (#0398506)
Timothy D. Johnson (#0394918)
SMITH JADIN JOHNSON, PLLC
7900 Xerxes Avenue South, Suite 2020
Bloomington, MN 55431
Tel: (952) 388-0289
aremick@sjjlawfirm.com
tjohnson@sjjlawfirm.com

Attorneys for Respondent

(Additional Counsel listed on following page)

2022 – BACHMAN LEGAL PRINTING – PHONE (612) 339-9518

Dale O. Thornsjo (#162048)
Lance D. Meyer (#0393073)
O'MEARA, LEER, WAGNER
& KOHL, P.A.
7401 Metro Boulevard, Suite 600
Minneapolis, MN 55439
Tel:(952) 831-6544
DOThornsjo@OLWKLaw.com
LDMeyer@OLWKLaw.com

Attorneys for Amici Curiae
The Insurance Federation of Minnesota and
The American Property Casualty Insurance Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION AND STATEMENT OF *AMICUS CURIAE*

United Policyholders ("UP") is a non-profit organization whose mission is to be a trustworthy and useful information resource and effective voice for consumer policyholders of all types of insurance in all 50 states, including those who live in Minnesota. UP helps consumers take personal responsibility to protect their homes and assets by buying insurance and being informed about insurance matters.

STATEMENT OF THE CASE AND FACTS

UP concurs with the Respondent's Statement of the Case and Statement of Facts.

STANDARD OF REVIEW

UP concurs with Respondent's statement of the standards of review.

LEGAL DISCUSSION

I. Minn. Stat. § 549.09, subd. 1(b)Affords a Statutory Right to Preaward Interest on Appraisal Awards

The language of Minn. Stat. §549.09 affords a statutory right to preaward and postaward interest on pecuniary damages awards, relevantly:

> Subdivision 1.**When owed; rate.** (a) When a(n)…award is for the recovery of money, …interest from the time of the ….award…. until judgment is finally entered shall be computed by the court administrator or arbitrator as provided in paragraph (c) and added to the judgment or award.
>
> (b) Except as otherwise provided by contract …, preaward… interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first….

Amici and parties agree that subd. 1 (b) is key to analyzing whether State Farm's policy language, "No interest accrues on the loss until after the loss becomes payable," vitiates

policyholder Wesser's statutory right to preaward interest in an appraisal award as Appellant contends. (Decl. of Ann Summerfield in Supp. Of Def.'s Mot. for Summ. J., Ex. 2).

In *Poehler v. Cincinnati Ins. Co.,* this Court declared that §549.09 created a statutory right for policyholders to recover preaward interest on their appraisal awards unless the "contractual language [of the policy] explicitly preclud[es] preaward interest." 899 N.W.2d 135, 140-142 (Minn. 2017) (emphasis added); *Oliver v. State Farm Fire & Cas. Ins. Co.,* 923 N.W.2d 680, 684 (Minn. Ct. App. 2019), *aff'd,* 939 N.W.2d 749 (Minn. 2020) citing S*chwickert, Inc. v. Winnebago Seniors, Ltd.*, 680 N.W.2d 79, 88 (Minn. 2004).

Scrutinizing the meaning of "pecuniary damages" in sec. 549.09, this Court in *Poehler* determined the statutory right to interest encompassed insurance appraisal awards because the term was synonymous with "actual damages" like those awarded in the appraisal process. *Poehler*, 899 N.W.2d at 141 citations omitted. Notably, this Court focused on the actual statutory language: "preaward… interest" on the "award" for "pecuniary damages." *Id*.; 549.09, subd. 1 (a) and (b). The focus was not upon interest for "the loss" as "loss" is not a term included by the legislature anywhere in sec. 549.09, and this Court's role is to enforce the plain language of the statute wherever possible. *Poehler,* 899 N.W.2d at 140.

In *Poehler*, this Court also looked specifically at the policy's contractual language to determine whether it limited "recovering preaward interest on the appraisal award." *Id.* Finding the payment provision of the *Poehler* policy silent on the policyholder's

specific right to recover pre**award** interest and addressing only when liability for payment of a covered loss was ripe, this Court declared that preaward interest was owed on the appraisal award. *Id.* at 142. The question of when a payment for a loss is due is **distinct** from the question of when preaward interest begins to accrue. *Id.* at 143. As such, preaward interest is owed where "the policy does not **explicitly prohibit preaward** interest on appraisal awards." *Id.* at 143 (emphasis added).

In so deciding, this Court set a high standard for excluding or otherwise limiting preaward interest, but one that is certainly in perfect alignment with longstanding Minnesota precedent requiring "strict construction of insurance policies against the insurer." *Id.* at 142; *K & R Landholdings, LLC v. Auto-Owners Ins.*, 907 N.W.2d 658, 663 (Minn. Ct. App. 2018)

The *Poehler* decision thus sets forth notable precedent to be applied to the case at bar in two ways. First, the critical question is whether State Farm's policy **explicitly prohibits preaward** interest on appraisal awards? Second, *Poehler* makes clear that a "loss" and an "appraisal award" are two distinct concepts and, accordingly, when *a loss* is payable does not control when *preaward interest* is owed on an appraisal award. *Poehler,* 899 N.W.2d at 140.

That reasoning is supported by Minn. Stat. sec. 65A.01, the Standard Fire Statute, which uses the term "loss" 44 times, the term "appraisal" twice, and the term "award" twice, each as distinct and separate concepts. When the legislature uses different terms, the canon against surplusage favors giving each word a distinct– not interchangeable– meaning in an attempt to avoid an interpretation that renders any word "superfluous, void,

or insignificant, thereby ensuring each word in a statute is given effect." *State v. Thompson,* 950 N.W.2d 65, 69 (Minn. 2020) citations omitted. Consequently, the term "loss" cannot be interchanged with the terms "appraisal" or "award" because the legislature used all three distinct terms in sec. 65A.01, the statute governing fire policies like the one issued by State Farm. Similarly, Minn. Stat. sec. 549.09 uses "award" as well as "interest" and "preaward… interest". Again, these terms must all be construed as unique and distinct. They are not interchangeable as a matter of law.

As such, the first question is whether the State Farm policy "explicitly" uses the terms "preaward interest" and "appraisal" and "award" when attempting to exclude the policyholder's right to statutory interest. Merriam-Webster's Dictionary defines the term "explicit" as "fully revealed or expressed without vagueness, implication, or ambiguity: leaving no question as to meaning or intent." https://www.merriam-webster.com/dictionary/explicit?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last visited Nov. 23, 2022). *See Blehr v. Anderson*, 955 N.W.2d 613, 618 (Minn. Ct. App. 2021)(dictionary terms apply to statutory construction when a term is otherwise undefined). Accordingly, "explicitly" is a very high standard, leaving no room for any ambiguity.

Several appellate decisions since *Poehler* have analyzed whether preaward interest has been explicitly limited by a policy. In *K & R Landholdings, LLC v. Auto-Owners Insurance*, the Court of Appeals acknowledged the "explicit" standard set forth in *Poehler* and rejected Auto-Owners' argument that the two-year limitation period in the policy barring suit also barred preaward interest, reasoning: "(S)ection 549.09

unambiguously provides for preaward interest on all awards of pecuniary damages that are not specifically excluded by the statute, and [...]nothing in the plain language of the policy addresses High Banks' right to receive **preaward interest**." 907 N.W.2d 658, 662 (Minn. Ct. App. 2018)(emphasis added). Similarly, in *Oliver v. State Farm Fire & Cas. Ins. Co.*, the policyholder's right to interest was upheld because the "policy does not contain any language limiting or prohibiting **preaward interest**." 923 N.W.2d at 685 (emphasis added).

Turning to the question of whether State Farm met its "onerous" burden of drafting exclusionary language that **explicitly** prohibits or limits "preaward interest" on "appraisal awards", the policy language speaks for itself and the answer is an unequivocal "no." *See id*.; *Nathe Bros. Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 244 (Minn. 2000)(insurer bears onerous burden of drafting clear exclusions). State Farm chose to draft an exclusion addressing "interest" on the "loss" without mention of "preaward interest" specifically or "appraisal" or "award." Given that these terms are all different (as discussed above), at best the purported interest exclusion is ambiguous as to preaward appraisal interest. It is a fundamental tenet of Minnesota insurance law that ambiguous policy terms are resolved against the insurer and in favor of coverage. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.,* 718 N.W.2d 888, 894 (Minn. 2006); *Eng'g & Const. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 705 (Minn. 2013).

Rather than plainly and "explicitly" excluding preaward interest as prescribed in *Poehler*, State Farm's policy language merely addresses interest on "the loss" when "the loss" is payable. As indicated above, secs. 65A.01 and 549.09 make clear that "the loss"

and an "appraisal award" are markedly different concepts. While State Farm and Amici The Insurance Federation of Minnesota and The American Property Casualty Insurance Association urge this Court to treat these two terms interchangeably, if not identically, doing so would run afoul of the canon against superfluages. *Thompson,* 950 N.W.2d at 69. Different statutory terms simply have different meanings. *Id.*

To that end, the Court of Appeals herein correctly concluded that the exclusionary language at issue was, at best, ambiguous. *Wesser v. State Farm Fire & Cas. Co.,* 2022 WL 1920604, at *2 (Minn. Ct. App. June 6, 2022).

> The loss-payable endorsement excluding interest accrual on "the loss" does not explicitly exclude preaward interest under Minn. Stat. § 549.09 for an appraisal award of replacement cost value. Based on the applicable law and policy language, Wesser is entitled to preaward interest computed from the time of written notice of claim on the replacement cost value awarded by the appraisal panel, less the ACV paid by State Farm.

Id, at *5. "Ambiguous language does not explicitly preclude preaward interest." *Id.*

Additionally, the Court of Appeals correctly noted that State Farm's policy language (which deviates from sec. 65A.01) fails to clearly provide one definition for the term "the loss." *Id.* at *3 ("the loss" refers to the covered property, the "losses insured" including damage by fire, the cost to repair with similar construction and for the same use, and in the appraisal provisions for when the "amount of the loss" is disputed, wherein the appraisal panel separately states the ACV and RCV). When one term has more than one reasonable meaning, the term is ambiguous and must then be resolved in the policyholder's favor. *Id.*; *Eng'g & Const. Innovs.*, 825 N.W. 2d at 705.

Additionally, an insurer's liability for payment of the "loss" or "damage" from a covered peril (like a fire) is separate and distinct from the insurer's responsibility to pay

preaward appraisal interest on the award itself. *Poehler* makes that clear as did the Court of Appeals in *K & R Landholdings, LLC v. Auto-Owners Ins.*, 907 N.W.2d 658, 662 (Minn. Ct. App. 2018) when rejecting that the two-year deadline governing an action for coverage payments under the policy is not applicable to an action for payment of preaward appraisal interest.

Had State Farm subjectively intended to amend its policy post-*Poehler* to prohibit or limit preaward interest on an appraisal award, the insurer could very simply have drafted its policy using the express language set forth in *Poehler* and repeatedly echoed in its progeny, such as: "No preaward interest shall accrue on appraisal awards"; or "Preaward interest on appraisal awards is prohibited and shall not accrue." Rather, State Farm elected **not** to address preaward interest in any explicit way and opted for the altogether distinct term, "loss" and the general term "interest" (used in sec. 549.09, subd. 1 (a)) not the specific term "preaward… interest" used in sec. 549.09, subd. 1 (b)0. Consequently, the purported exclusionary language in State Farm's policy is ineffective for failing to meet the "explicitly prohibited" test, and Wesser is entitled to preaward interest at the Court of Appeal's concluded. *Wesser*, 2022 WL 1920604, at *4 citations omitted.

To find otherwise would not only conflict directly with *Poehler*, *Oliver*, and *K & R Landholdings*, but would undercut the fundamental remedial nature and purpose for which Minn. Stat. sec. 549.09 was codified: to ensure parties' rights to preaward, preverdict, and prejudgment "whenever possible." *Hogenson v. Hogenson*, 852 N.W.2d 266, 273–74 (Minn. Ct. App. 2014)("phrase '[e]xcept as otherwise ... allowed by law'

requires that preverdict interest be calculated under existing common-law principles") cited by *Andersen v. Owners Ins. Co.*, 2018 WL 1569837, at *2 (Minn. App. Apr. 2, 2018).

Moreover, allowing an insurer like State Farm to fall short of "explicitly" excluding preaward appraisal interest would run afoul of the strong consumer protection that Minn. Stat. Sec. 65A.01 is intended to afford fire policyholders. Minn. Stat. sec. 65A.01, contains a "statutory command" that "specifically entitles an insured to interest" (even where the insurer's total obligation exceeds the coverage limits). *Else v. Auto-Owners Ins. Co.*, 980 N.W.2d 319, 326 (Minn. 2022). "In the 125 years the standard fire policy has been in place, we have never interpreted the standard fire policy to deny an insured prejudgment interest when the insurer denies liability." *Id*. at 330.

Combined, secs. 65A.01 and 549.09 provide strong consumer protection[1] ensuring a policyholder's right to receive interest for two main purposes: (1) to provide compensation for the true cost of money damages incurred; and (2) to promote settlements and deter attempts to benefit unfairly from delays. *Id*.; *Blehr*, 955 N.W.2d at 618 citing *Solid Gold Realty, Inc. v. Mondry*, 399 N.W.2d 681, 683 (Minn. App. 1987); *Nelson v. Illinois Farmers Ins. Co.*, 567 N.W.2d 538, 543 (Minn. Ct. App. 1997); *Creekview of Hugo Ass'n, Inc. v. Owners Ins. Co.*, 386 F. Supp. 3d 1059, 1068 (D. Minn. 2019). Aligned with the principle of indemnity fundamental to insurance, preaward

[1] 65A.01 is a consumer protection statute and must be broadly construed for that purpose. *Watson supra*. It cannot and "should not be used 'as a sword for the insurer'." *Poehler*, 899 N.W.2d at 145.

interest is merely an element of damages awarded to provide full compensation by converting time-of-demand ... damages into time-of-[award] damages." *Else*, 980 N.W.2d at 325 *citing Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988).

Restated, sec. 549.09 ensures a prevailing party is compensated for the delay between when damages were demanded and when the award is made. This is an important consideration. It has grown increasingly common in Minnesota for insurers like State Farm to **not pay appraisal awards** after they are issued, requiring judicial intervention post-appraisal to determine the insurer's obligation to pay for the amount awarded for the loss *in addition to* the insurer's obligation to pay for preaward interest. *See e.g., Cedar Bluff Townhome Condo. Ass'n, Inc. v. Am. Fam. Mut. Ins. Co.,* 857 N.W.2d 290, 291 (Minn. 2014)(challenging liability to pay for amount awarded for matching); *St. Matthews Church of God & Christ v. State Farm Fire & Cas. Co.,* 2022 WL 17171479, (Minn. Nov. 23, 2022); *Hayes v. State Farm Fire & Cas. Co.* No. 19HA-CV-21-1773, 2022 WL 874024, at *4 (Minn.Dist.Ct. Jan. 19, 2022)(challenging liability for payment of matching portion of appraisal award).

In light of these delays, a policyholder's right to preaward interest as fundamental compensation for the insurer's withheld payment of the appraisal award is a genuine issue of increasing concern. For that reason, the consumer protections provided by and public policy underpinning sec. 65A.01 calls into question whether an insurer may even exclude interest altogether, an issue not addressed by this Court in *Poehler* but discussed further below.

While the broad and general statute Minn. Stat. sec. 549.09 permits "contractual" modification, the insurance- specific Minn. Stat. sec. 65A.01 does not permit contractual policy terms that fall short of the protections afforded therein. *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 690 (Minn. 1997). Inasmuch, Amici The Insurance Federation of Minnesota and The American Property Casualty Insurance Association's "freedom to contract" argument overreaches. Insurers are not entitled to "freely" shortchange policyholders or provide less than the mandatory minimum fire insurance requirements. *Watson*, 566 N.W.2d at 690.

As Respondent's Brief at pages 25-26 accurately addresses, this Court's decision in *Else v. Auto-Owners Ins. Co.* (980 N.W.2d 319 at 326) confirms that sec. 65A.01 affords fire policyholders, like Wesser, preaward (*i.e.* "prejudgment") interest and further mandates policy language about when a loss is payable. State Farm has significantly deviated from the loss payment minimum standards by tacking-on the exclusionary language at issue herein, effectively providing less coverage than that mandated by sec. 65A.01. Consequently, as a matter of law, the exclusionary language is ineffectual and the policy automatically reformed to comply with 65A.01. *Watson*, 566 N.W.2d at 690. As a result, preaward interest is owed. *See Else supra*.

II. Public Policy Considerations Mandate Preaward Interest for Fire Policyholders as A Fundamental Purpose of Minn. Stat. Sec. 549.09 and of Minn. Stat. Sec. 65A.01.

Public policy considerations and the purpose underlying both sec. 65A.01 and sec. 549.09 strongly indicate that policyholders have an unequivocal right to preaward,

preverdict, and prejudgment interest that should not be eroded. This Court as well as the Minnesota Court of Appeals and federal district and appellate courts applying Minnesota law have consistently construed Minn. Stat. sec. 549.09 liberally in order ***to protect*** policyholder's rights to preaward, preverdict, and prejudgment interest "whenever possible." *Hogenson*, 852 N.W.2d at 273–74. That approach is entirely correct considering "insurance contracts are contracts of adhesion" (*Travelers Indem. Co. v. Bloomington Steel & Supply Co*., 718 N.W.2d 888, 895 (Minn. 2006)) authored solely by the insurance industry, leaving consumers vulnerable to one-sided terms like the exclusionary language at issue in State Farm's policy.

For example, the "written notice" requirement for preaward interest (generally the earliest potential date triggering interest under Minn. Stat. sec. 549.09, subd. 1(b)) has been liberally construed to ensure that preaward interest is available to the fullest extent possible. In *Blehr v. Anderson*, this Court found that a letter of representation sent to the claims office stating that a lawyer had been retained in connection with an accident and sought to "confirm the existence and amount of coverage" was sufficient notice to trigger interest. 955 N.W.2d at 617; *see Indep. Sch. Dist. 441 v. Bunn-O-Matic Corp.* 1996 WL 689768, at *10 (Minn. App. Dec. 3, 1996)(letter stating coffee machine caused fire sufficient notice); *Selective Ins. Co. of S.C. v. Sela,* 11 F.4th 844, 851 (8th Cir. 2021)(property loss notice sufficient); *Creekview of Hugo Ass'n, Inc.* 386 F. Supp. 3d at 1068 (email notifying insurer of claim is sufficient and "sparks the insurer's 'affirmative duty to inquire into the particular benefits that the [insureds] were claiming and to provide [them] with a position on their claim.'"). These cases effectively ensure that

preaward interest accrues as long as possible and that the policyholder is fully compensated– a result entirely consistent with this Court's recognized purpose for sec. 549.09.

Long before *Poehler* was decided, in *Lienhard v. State*, 431 N.W.2d 861, 865 (Minn. 1988), this Court discussed the 1984 amendments to sec. 549.09 that allowed preverdict, preaward, and prejudgment interest regardless of whether a defendant could ascertain the amount of damages:

> Minnesota's statutory provision for pre-verdict interest appears to represent a retreat from the defendant's point of view **in favor of the plaintiff's perspective with respect to compensation**. *See Hearings on H.F. No. 559 Before the Law Reform Subcomm. of the House Comm. on the Judiciary,* 73rd Leg., 1st Sess. (Apr. 13, 1983) (audio tape) (remarks of Rep. Schoenfeld, author of bill, stating that **one of three purposes of bill was to compensate plaintiffs more fully**); Note, *The Minnesota Pre–Judgment Interest Amendment: An Analysis of the Offer–Counteroffer Provision,* 69 Minn.L.Rev. 1401, 1403–10 (1985) (discussion of history of pre-judgment interest as a measure to provide full compensation for plaintiffs who negotiate reasonably).

(Emphasis added). "(I)t is apparent that pre-verdict [pre-award, and pre-judgment] interest is **not conventional interest on a sum of money**. Rather, it is **an element of damages** awarded to provide full compensation by converting time-of-demand (either by written settlement offer or commencement of action) damages into time-of-verdict damages." *Id.* citing C. McCormick, *Law of Damages,* § 50, at 205 (1935) (pre-verdict interest is compensation "allowed by law as additional damages for loss of use of the money due as damages"); D. Dobbs, *Remedies,* § 3.5, at 165 (1973), other citations omitted (emphasis added).

To decide that an insurer, like State Farm, issuing fire policies to consumers throughout Minnesota may eliminate its liability for preaward interest altogether would result in policyholders ***not*** being fully compensated for their damages and turning time-of-demand damages into time-of-award damages rather than *visa versa.* That result in both regards is the **polar opposite** of sec. 549.09's purpose and, unequivocally, will benefit *only* the insurance company and *further injure* policyholders by ensuring *incomplete* compensation, especially in times of high inflation where delay results in money being worth less. In that instance, the insurer benefits from both the premium collected and the interest and dividends the insurer continues to earn thereon while the funds owed to policyholders are withheld. That result directly conflicts with this Court's purpose for preaward interest recognized in *Lienhard*.

Permitting the preclusion of interest as Appellant and Amici The Insurance Federation of Minnesota and The American Property Casualty Insurance Association propose is untenable in light of Minn. Stat. secs. 65A.01 and 549.09 and their collective purpose to protect policyholder plaintiffs. "It is a rule, if effects and consequences shall result from an interpretation of a statute contrary and in opposition to the policy which it discloses, or substantially avoiding the infliction of a penalty upon the transgressor, that such an interpretation must be rejected." *Harris v. Runnels*, 53 U.S. 79, 86, 13 L. Ed. 901 (1851).

Also, Minn. Stat. sec. 645.17(5) plainly states that "the legislature intends to favor the public interest as against any private interest." There can be no doubt that the "public interest" herein is the consumer policyholders in the general public to which

insurers like State Farm are marketing and selling their adhesion contracts. The statutes intended to serve these consumers must be construed and applied to actually protect policyholders' rights to full compensation as "an element of damages awarded" by appraisal. *Lienhard*, 431 N.W.2d at 865.

Additionally, where a private party (like an insurer) attempts to contractually bind another in contravention of a clear legislative mandate or judicially recognized public policy, the Court may strike down the offending contract (or specific contractual language) under the public policy exception. *See Phipps v. Clark Oil & Ref. Corp.,* 396 N.W.2d 588, 593 (Minn. Ct. App. 1986), *aff'd,* 408 N.W.2d 569 (Minn. 1987)(cause of action for wrongful termination under the public policy exception to the at-will employment doctrine). Again, fully compensating policyholders by requiring payment of preaward, prejudgment, and preverdict interest is part of the fundamental purpose for which secs. 65A.01 and 549.09 exist. *Lienhard supra*; *Else supra*. Even if (hypothetically) State Farm had explicitly prohibited preaward interest on an appraisal award, the public policy exception would be properly employed to reject it.

Minnesota law fully supports a statutory right to preaward, prejudgment, and preverdict interest for policyholders that cannot or, at a minimum, should not be altogether vitiated by insurers as State Farm has attempted herein. While preaward, prejudgment, and preverdict interest may be modified in terms of specifically defined "triggers" for accrual (such as submission of the "proof of loss" or upon a written demand for appraisal referred to in sec. 65A.01), altogether preclusion of preaward

interest on an appraisal award must be rejected as running afoul of the fundamental purpose of both Minn. Stat sec. 65A.01 and sec. 549.09.

Finally, it cannot be overlooked that preaward interest is an important consumer policyholder right when an insurance company undervalues a claim and forces a policyholder to incur the costs of paying its own appraiser, paying half the cost of an umpire, and then increasingly being required to hire legal counsel to engage in post-appraisal litigation. After this Court determined in *Oliver v. State Farm Fire & Cas. Ins. Co.,* 939 N.W.2d 749, 753 (Minn. 2020) that the appraisal process under sec. 65A.01 does not constitute an "'agreement to arbitrate' under section 572B.03 of the Minnesota Uniform Arbitration Act", policyholders lost their rights to recover reasonable legal fees under sec. 572B.25 when an insurance company refuses to pay and challenges an appraisal award. *See Savanna Grove Coach Homeowners' Ass'n v. Auto-Owners Ins. Co.*, No. 19-CV-1513 (ECT/TNL), 2020 WL 3397312, at *2 (D. Minn. June 19, 2020) *compare and contrast with* the pre-*Oliver* decision of *Creekview of Hugo Ass'n, Inc.*, 386 F. Supp. 3d at 1072.

The practical effect of *Oliver* is that the financial burden of litigation without any right to recovery of legal fees makes it impossible for many policyholders, especially single-family homeowners, to pursue full compensation from their insurance companies for the amounts awarded to them in the appraisal process when the insurance company denies coverage, in whole or in part, after the appraisal award is issued. Preaward interest remains the only remaining compensatory safeguard for consumer policyholders

and, as such, should not be cast aside lightly by this Court. To the contrary, that right is worthy of legislative and judicial protection.

CONCLUSION

For all of these reasons, *amicus curiae* United Policyholders respectfully requests that the decision of the Court of Appeals be affirmed and that this Court further declare that preaward interest on an appraisal award cannot be altogether precluded, as a matter of public policy and as a result of the protections afforded policyholders by Minn. Stat. secs. 65A.01 and 549.09. The State Farm policy language at issue attempting to preclude interest on Appellant's appraisal award is unenforceable as ambiguous and runs afoul of the consumer protections afforded by Minn. Stat. secs. 65A.01 and 549.09.

Respectfully Submitted,

Dated: November 28, 2022

/s/ Adina R. Bergstrom

Adina R. Bergstrom (#0337833)
SAURO & BERGSTROM, PLLC
992 Inwood Ave N
Oakdale, MN 55128
Telephone: (651) 389-9915
adina@saurolaw.com

ATTORNEY FOR *AMICUS CURIAE* UNITED POLICYHOLDERS

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record, pursuant to Rule 132.01, subd. 3(a) of the Rules of Civil Appellate Procedure hereby certifies that the attached brief has been prepared using Microsoft Word, Times New Roman, with a font size of 13 point and a word count of 4,164.

Dated: November 28, 2022

/s/ Adina R. Bergstrom

Adina R. Bergstrom (#0337833)
SAURO & BERGSTROM, PLLC
988 Inwood Ave N
Oakdale, MN 55128
Telephone: (651) 389-9915
adina@saurolaw.com

ATTORNEY FOR *AMICUS CURIAE* UNITED POLICYHOLDERS